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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 76–134)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 3, 1976.

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parenthesis immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Atlantic Overseas Corp., 5 World Trade Center, New York, NY; Peerless Ins. Co. (PB 3/27/73) D 3/27/76 [1]	Mar. 27, 1976	Mar. 29, 1976	New York Seaport; $10,000
Antilles Shipping Corp., Isla Grande Airport, San Juan, PR; U.S. Fidelity & Guaranty Co. D 5/24/76	May 25, 1972	May 26, 1972	San Juan, PR; $10,000
Barber Steamship Lines, Inc., 17 Battery Place, New York, NY; Federal Ins. Co. (PB 4/13/63) D 4/13/76 [2]	Apr. 13, 1976	Apr. 2, 1976	New York Seaport; $10,000
R. Burkholder, Lititz, PA; St. Paul Fire & Marine Ins. Co.	Feb. 27, 1976	Mar. 2, 1976	Buffalo, NY; $10,000
Central Gulf Lines, Inc., Int'l Trade Mart Bldg., New Orleans, LA; Fidelity & Casualty Co. of NY D 3/8/76	Mar. 8, 1975	Mar. 10, 1975	New Orleans, LA; $10,000
East Coast Agencies, Inc., (A Florida Corp.), 820 N.W. 2nd Avenue, Miami, FL; St. Paul Fire & Marine Ins. Co. (PB 4/2/75) D 4/2/76 [3]	Apr. 2, 1976	Apr. 2, 1976	Miami, FL; $10,000

See footnotes at end table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Metro Distributing Co., 550 South Mission Rd., Los Angeles, CA; St. Paul Fire & Marine Ins. Co.	Feb. 12, 1976	Feb. 18, 1976	Los Angeles, CA; $10,000
Nesor Alloy Corp., 666 Passaic Ave., West Caldwell, NJ; Peerless Ins. Co.	Feb. 24, 1976	Feb. 24, 1976	New York Seaport; $10,000
Pacific and Arctic Railway and Navigation Co., 510 West Hastings St., Vancouver, B.C., Canada, U.S. Fidelity & Guaranty Co. D 3/2/76	Mar. 1, 1972	Mar. 6, 1972	Anchorage, AK; $10,000
Pacific International Freightliners, Board of Trade Building, Portland, OR; St. Paul Fire & Marine Ins. Co. D 2/4/76	Aug. 4, 1972	Aug. 7, 1972	Portland, OR; $10,000
Southern Star Shipping Co., Inc., 29 Broadway, New York, NY; St. Paul Fire & Marine Ins. Co.	Mar. 30, 1976	Mar. 30, 1976	New York Seaport; $10,000
T T T Ship Agencies, Inc. (A Del. Corp.), 71 Broadway, New York, NY; Fireman's Fund Ins. Co. (PB 10/3/61) D 3/1/76 [4]	Mar. 1, 1976	Mar. 5, 1976	New York Seaport; $10,000

[1] Surety is Seaboard Surety Co.
[2] Surety is St. Paul Fire & Marine Ins. Co.
[3] Surety is Sentry Indemnity Co.
[4] Principal is Texas Transport & Terminal Co., Inc., Surety is National Surety Corp.

HARVEY B. FOX
for LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 76-135)

Chain Door Locks

Restriction on Importation

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 7, 1976.

There is hereby published for direction and guidance of Customs officers and others concerned, effective April 3, 1976, the following Notice and Order from the United States International Trade Commission, directing the exclusion from entry of chain door locks made in accordance with any claim or combination of claims of certain United States Letters Patent:

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of:	)	
	)	Investigation No. 337-TA-5
CHAIN DOOR LOCKS	)	

Notice and Order
Concerning
Commission Determination

This matter has come for Commission determination under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337; 88 Stat. 2053; hereinafter, section 337). Pursuant to the Notice and Order of February 13, 1976, in this matter, the Commission has undertaken plenary consideration of this matter and, based upon the record of this investigation, has found and concluded (Commissioners Parker and Ablondi dissenting in part) as follows:

1. That there are violations of section 337 in the importation into the United States of chain door locks by reason of their having been made in accordance with the claims of U.S. Patent No. 3,161,935 to J. Adamec *et al.*, U.S. Patent No. 3,275,364 to B. A. Quinn, and U.S. Patent No. 3,395,556 to R. W. Waldo, hereinafter referred to as "the Adamec Patent," "the Quinn Patent," and "the Waldo Patent," respectively, and in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States. Commissioner Parker finds that there is no violation of section 337 in respect to the Adamec Patent but finds violation with respect to the Quinn and Waldo Patents.

2. That the appropriate remedy for these violations and each of them is to direct that the articles concerned, chain door locks made in accordance with one or more of the claims of the Adamec, Quinn, and Waldo Patents, be excluded from entry into the United States for the term of these respective patents; and that, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers, such articles should be excluded from entry. Commissioner Parker concurs in this remedy with respect to the Quinn and Waldo Patents and dissents with respect to the Adamec Patent. Commissioner Ablondi concurs in the remedy prescribed with respect to the Quinn and Waldo Patents, but he would issue a cease and desist order with respect to imports infringing only the Adamec Patent, to permit respondent Ilco Corporation to cease and desist its unfair trade practices.

3. That the bond provided for in subsection 337(g)(3) is determined by the Commission to be as prescribed by the Secretary of the Treasury in the amount of 50 percent of the value of the articles concerned, f.o.b. foreign port.

ACCORDINGLY, IT IS ORDERED THAT:

1. Articles made in accordance with any claim or combination of claims of United States Letters Patent No. 3,161,035 to J. Adamec *et al.*, imported by any person, shall hereafter until the expiration of such Letters Patent be excluded from entry into the United States except (1) as provided in paragraph 4 of this Order or (2) as such importation is under license of the lawful owner or assignee of ownership of the said Letters Patent.

2. Articles made in accordance with any claim or combination of claims of United States Letters Patent No. 3,275,364 to B. A. Quinn, imported by any person, shall hereafter until the expiration of such Letters Patent be excluded from entry into the United States except (1) as provided in paragraph 4 of this Order or (2) as such importation is under license of the lawful owner or assignee of ownership of the said Letters Patent.

3. Articles made in accordance with any claim or combination of claims of United States Letters Patent No. 3,395,556 to R. W. Waldo, imported by any person, shall hereafter until the expiration of such Letters Patent be excluded from entry into the United States except (1) as provided in paragraph 4 of this Order or (2) as such importation is under license of the lawful owner or assignee of ownership of the said Letters Patent.

4. Notwithstanding the foregoing, from the day after the day this Order is received by the President pursuant to section 337(g) of the Tariff Act of 1930, as amended, until such time as the President approves or disapproves this Commission action (but in any event, no later than sixty (60) days after such day of receipt), the articles concerned shall be entitled to entry under bond in the amount of fifty per centum (50%) of the value, f.o.b. foreign port, of the articles concerned.

5. This Order will be published in the FEDERAL REGISTER and served upon each party of record in this investigation and upon the U.S. Department of Health, Education, and Welfare, the U.S. Department of Justice, and the Federal Trade Commission.

By order of the Commission:

KENNETH R. MASON.

ISSUED: *April 5, 1976*

The chain door locks and guards are classified under Tariff Schedule Item Nos. 646.92, 647.03 or 647.05. The determination as to whether imported articles are restricted will be made initially by reference to the International Trade Commission Opinion issued simultaneously with its Notice and Order in this matter.

On April 3, 1976, the President received a copy of the International Trade Commission's determination. Beginning on April 4, 1976, articles subject to the exclusion order shall only be entitled to entry under bond in the amount of fifty per centum (50%) of the value, f.o.b. foreign port, or pursuant to an import license issued by the lawful owner or assignee of ownership of the Letters Patent, within the terms of the International Trade Commission order. However, as of June 3, 1976, unless the President has earlier disapproved the determination, articles previously entered under bond shall be exported, or a claim for liquidated damages shall be asserted. If the President disapproves the determination before June 3, 1976, the above-mentioned bond shall be canceled and the merchandise entitled to entry, effective on the date that the President notifies the Commission. If the President does not disapprove the determination within the 60-day period ending on June 2, 1976, or if he notifies the Commission before then that he approves such determination, then it shall become final on the day after the close of the 60-day period (i.e. June 3, 1976), or the day on which the President notifies the Commission of his approval, as the case may be.

The International Trade Commission Notice and Order was published in the FEDERAL REGISTER April 8, 1976 (41 FR 14948). (706386)

(PAT-3-R:E:R)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the FEDERAL REGISTER May 14, 1976 (41 FR 19989)]

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4647)

FINN BROS., INC.
BREHM IMPORTING CO.
C. ROSENBACH CO.
v. UNITED STATES

Carved ivory flowers

SEMIPRECIOUS STONES—COMMON MEANING—COMMERCIAL MEANING

Plaintiffs failed to prove that the tariff term "semiprecious stones" has a common or commercial meaning which would include carved ivory flowers used as parts of jewelry.

Court Nos. 70/64009, etc.
Court Nos. 70/9485, etc.
Court Nos. 70/24316, etc.

Ports of Boston and Providence

[Judgment for defendant.]

(Decided April 26, 1976)

Doherty and Melahn (*Walter E. Doherty, Jr.*, of counsel) for the plaintiffs.
Rex E. Lee, Assistant Attorney General (*Andrew P. Vance*, Chief, Customs Section, *Max Schutzman* and *Edmund F. Schmidt*, trial attorneys), for the defendant.

WATSON, Judge: In these jointly tried actions plaintiffs oppose the classification of their imported carved ivory flowers as jewelry or parts thereof [1] and seek classification of them as semiprecious stones.[2] Plaintiffs argue that these importations fall within the common meaning, or alternatively, the commercial meaning, of the term semiprecious stones. The record in *Finn Bros., Inc.* v. *United States*, 59 CCPA 72, C.A.D. 1042, 454 F. 2d 1404 (1972), *aff'g* 65 Cust. Ct. 252, C.D. 4085 (1970), was incorporated herein.

As a preliminary matter, I am of the opinion plaintiffs have successfully proved the importations are parts of jewelry rather than unfinished jewelry; the distinction being that as imported they are but one component of the contemplated article of jewelry and lack the essential metal findings such as rings, pins or pendants with which they must be combined in order to function as, or be considered and sold as, jewelry. See *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109 (1973), *aff'g* 68 Cust. Ct. 204, C.D. 4362, 343 F. Supp. 1372 (1972). See also, *Montgomery Ward & Co.* v. *United States*, 61 CCPA 101, C.A.D. 1131, 499 F. 2d 1283 (1974). I understand the term unfinished jewelry to mean jewelry articles possessing their essential parts but lacking some other measure of finality in their manufacture.

This finding has the effect of allowing plaintiffs to argue that the importations are parts of jewelry only in the sense that acknowledged semiprecious stones are parts of jewelry and therefore the tariff schedules headnote,[3] which excludes jewelry and other articles provided for in part 6 of schedule 7 from the subpart in which semiprecious stones are set out, has no exclusionary effect on these importations.

While I see no logical inconsistency or statutory obstacle to a claim that these importations are parts of jewelry in a certain sense but are more specifically provided for as semiprecious stones, I have not been persuaded that they are indeed semiprecious stones.

[1] Item 740.38 of the Tariff Schedules of the United States, as modified by T.D. 68-9, with duty at the rate of 49%, 44% or 38% ad valorem, depending on the date of entry.

[2] Item 520.39 of the Tariff Schedules of the United States, as modified by T.D. 68-9, with duty at the rate of 4% or 3% ad valorem, depending on the date of entry.

[3] Headnote 1(vi) of schedule 5, part 1, subpart H.

The proposition that the common meaning of semiprecious stones encompasses ivory articles, even those which are used in jewelry in a manner similar to acknowledged semiprecious stones, was not proved in this case nor did I see any indication that it could be proved. A common meaning which would exclude ivory is so much more plausible and verifiable that I see no merit in this aspect of plaintiff's claim.

On the question of whether the tariff term "semiprecious stones" has a commercial meaning, that is to say, a well understood meaning of the trade which differs from its common meaning and which Congress can be assumed to have known, there was a divergence of opinion between the witnesses. I was not persuaded by plaintiffs' witnesses that a commercial meaning exists for the term in question.

The best proof of commercial meaning is not proof of the logic of the asserted trade usage but proof of the fact that it predominates.[4] In this case plaintiffs' proof was directed more to rationalizing the consideration of these ivory articles as semiprecious stones than to supporting the essential proposition that they were in fact *known* as semiprecious stones in the trade.

The testimony does establish that ivory is an organic substance comprising the teeth or tusks or certain animals and contains a large percentage or a mineral known as apatite. It has a value which would permit it to be called semiprecious in the sense that it falls between the extremes of value by which substances are categorized. It is an article of commerce in the jewelry trade and may be used in jewelry in the same manner as precious or semiprecious stones. It is treated in texts which have as their primary subject precious and semiprecious stones. All this may be granted. But the ultimate proposition, that ivory in the imported form or otherwise, is known in the trade as semiprecious stones, does not flow from the preceding facts nor was it established to my satisfaction by the opinion testimony of plaintiffs' witnesses, particularly in the face of strong testimony to the contrary from defendant's witnesses. I found no reason to give greater weight or credence to the testimony of plaintiffs' witnesses. In fact, I was left with the impression that their view of ivory articles as semiprecious stones was strained and expressed in a more tentative, oblique and technical manner than would be the case if it were simply the prevailing usage in the trade.

It has often been said that commercial meaning is rarely established in customs litigation. This is probably true, not because it requires a

[4] For example, there was no particluar logical reason for the commercial designation of imitation oriental rugs being applied to rugs which imitated none of the characteristics of oriental rugs or for the limitation of the term "palm oil" to the oil of one variety of palm tree. *Stephn Rug Mills* v. *United States*, 32 CCPA 110, C.A.D. 293 (1944); *Nylos Trading Company* v. *United States*, 37 CCPA 71, C.A.D. 422 (1949).

more demanding degree of proof but because the situations are relatively rare in which a tariff term has such a widespread "uncommon" meaning in a trade that Congress can be presumed to have used it that way as well.

In sum, I have not been persuaded that these importations are known in the jewelry trade as semiprecious stones. Consequently the classification under the provision for jewelry must be sustained. Judgment will enter accordingly.

(C.D. 4648)

THE NEWMAN IMPORTING CO., INC., *v.* UNITED STATES

Backpacking tents

SPORT

Backpacking, an activity in which persons travel on foot in wild areas and maintain themselves with supplies and equipment carried on their backs, is a sport within the meaning of the tariff schedules.

SPORT EQUIPMENT

Tents specially designed to be carried and used as shelter in the sport of backpacking are sport equipment.

Court No. 73-6-01414

Port of Los Angeles

[Judgment for plaintiff.]

(Decided April 26, 1976)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

WATSON, Judge: Plaintiff seeks classification of its imported tents as sport equipment[1] instead of the classification assigned by the customs officials under a residual provision for articles of textile materials.[2] Plaintiff claims these tents are designed for use in the sport of backpacking. Defendant argues that backpacking is not a sport and, even assuming it is, these tents are not used in the sport in the sense in which sport equipment must be used. Defendant also argues

[1] Item 735.20 of the Tariff Schedules of the United States, as modified by T.D. 68-9, providing for duty at the rate of 12% ad valorem.

[2] Item 389.60 of the Tariff Schedules of the United States, as modified by T.D. 68-9, providing for duty in the amount of 25¢ per pound, plus 18% ad valorem.

that these tents are not of the quality used in "serious" backpacking and further that a legislative intent existed to exclude tents from classification as sport equipment.[3]

Based on the testimony, I am persuaded that backpacking is a sport and that these tents are designed for use in the sport of backpacking so as to come within the meaning of the tariff term "sport equipment."

I have concluded from the evidence that backpacking is the activity of traveling on foot in relative wild areas and maintaining oneself with supplies and equipment carried on one's back. This activity falls within my understanding of the term "sport." It possesses to a meaningful degree the same attributes of healthy, challenging and skillful recreation which characterize such acknowledged sports as scuba diving, skiing, horseback riding and mountain climbing.

I reject the government's contention that a sport must involve competition either between individuals or against the natural elements; although I would say that the activity of backpacking involves sufficient subjection to the forces of nature to qualify as a competitive sport in the second sense of the government's contention. In any event the element of enjoyment or recreation arising from the development or practice of individual skills, different from those involved in routine daily activities, is a better indication of a sport than competitiveness. See, *Sports Industries, Inc.* v. *United States*, 65 Cust. Ct. 470, 474, C.D. 4125 (1970). See also, *David E. Porter* v. *United States*, 76 Cust. Ct. —, C.D. 4641 (1976). In short, the common meaning of the word "sport" is not limited to competitive activities, a fact which can be generally confirmed by reference to the dictionary definitions.

From the testimony it is clear that the use of a shelter is a necessary and regular part of the prudent practice of backpacking, and the normal method of obtaining shelter while backpacking is to carry and utilize a specially designed, lightweight portable tent.[4] At this point I note specifically that the use of a tent for shelter is part of the sport of backpacking, which encompasses not only the act of walking with a pack on the back but all the activities associated with the mainte-

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[3] This final argument relies on material from the Explanatory Notes to the Brussels Nomenclature (1955) and the Standard Industrial Classification Manual (1957). Since I detect no ambiguity in the term "sport equipment" there is no need to look for clues to legislative intent. Furthermore, I have strong doubts as to whether the language of the Brussels Nomenclature (APPLIANCES, APPARATUS, ACCESSORIES AND REQUISITES FOR * * * SPORTS * * *) or the SICM (SPORTING * * * GOODS) is sufficiently similar to the term "sport equipment" to support any conclusions drawn from the former as to the scope of the latter.

[4] On this essential point these tents are distinguished from the nets which were held not to be golf equipment in *Nichimen Co., Inc.* v. *United States*, 72 Cust. Ct. 130, C.D. 4514 (1974). The nets bordering the areas in which golfers practice their sport were not being used in the sport in anything approaching the sense in which these tents are used in backpacking.

nance of the individual while away from "civilization." In this respect tents would be equipment even under the stringent view of equipment formerly prevailing and exemplified in *Cruger's (Inc.)* v. *United States*, 12 Ct. Cust. Appls. 516, T.D. 40730 (1925), which held equipment to be limited to objects ordinarily required for the proper and efficient playing of a sport or protection from its hazards. It would therefore seem certain that under the modern view that sport equipment includes not only that which is "necessary" but also that which is specially designed for use in the sport, these tents are indeed sport equipment. See generally, *American Astral Corporation* v. *United States*, 62 Cust. Ct. 563, C.D. 3827, 300 F. Supp. 658 (1969).

That these tents were specially designed for use in backpacking is not in doubt as is made plain by the testimony as to their design and the emphasis placed on their lightness, compactness and ease of assembly.[5] Consequently, since backpacking is a sport and these tents are equipment specially designed and even necessary for use in the sport, they should have been classified for tariff purposes as sport equipment under item 735.20 of the TSUS, as modified.

Judgment will enter accordingly.

(C.D. 4649)

AMERICAN CUSTOMS BROKERAGE CO., INC., A/C ALBERS MILLING COMPANY *v.* UNITED STATES

Animal feeds

Grain screening pellets, produced in Canada and used as animal feed, were properly classified under item 184.75 of the tariff schedules as "[a]nimal feeds, and ingredients therefor, not specially provided for, other," and dutiable at the rate of 8 per centum ad valorem. Plaintiff's claim that the pellets were classifiable and duty free under item 184.70 of the schedules, as modified by T.D. 68–9, as "[b]yproducts obtained from the milling of grains, mixed feeds, and mixed-feed ingredients" was not proven, and was therefore overruled.

MIXED FEEDS—FEEDSTUFFS

Headnote 1(b) of schedule 1, part 15, subpart C requires that a mixed feed consist of an admixture of grains (or products, including byproducts, obtained in the milling of grains) with molasses,

[5] Defendant's argument that these tents lack the quality to be used in "serious" backpacking was not supported by the evidence and was not persuasive. I see no indication that sport equipment must be of a quality required by the most demanding practitioners of a sport or that these tents are not of a sufficient quality to be used in the sport. *Cf. New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 38, C.D. 3671, 294 F. Supp. 971 (1969).

oil cake, oil-cake meal or other feedstuffs; also that the grain content weigh no less than 6% of the mixed feed. The pellets at bar, though made of byproducts from the cleaning of various types of grain, contained neither molasses, oil cake or oil-cake meal. Plaintiff contended that the one other component, "LLS," was "other feedstuffs" within the headnote. Testimony and exhibits, however, established that "LLS" was not a feedstuff but a binding agent used to bind the pellet and make it more firm. Evidence designed to show that "LLS" was also used as a source of metabolizable energy was wholly inadequate to support a finding that it was a feedstuff within the meaning of the pertinent headnote and decided cases. *United States* v. *F. W. Myers & Co., Inc.*, 29 CCPA 34, C.A.D. 168 (1941); *Walter Johnson* v. *United States*, 21 CCPA 129, T.D. 46464 (1933); *Cia. Mexicana de Malta, S.A.* v. *United States*, 69 Treas. Dec. 729, T.D. 48273 (1936); *Southwestern Sugar & Molasses Co.* v. *United States*, 18 Cust. Ct. 128, C.D. 1056 (1947); *Mary G. Ricks* v. *United States*, 7 Cust. Ct. 63, C.D. 535 (1941). All the record evidence, including exhibits, established that "LLS" (liquid calcium lignosulfonate) was a product used for binding purposes, i.e., to form or bind the pellet, and was not used as a feedstuff.

Court No. 73-3-00796

Port of Honolulu

[Judgment for defendant.]

(Decided April 30, 1976)

Glad, Tuttle & White (*Edward N. Glad* and *Steven W. Baker* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Robert Masters* and *Ira J. Grossman*, trial attorneys), for the defendant.

RE, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of certain merchandise produced in Canada, and entered at the port of Honolulu, Hawaii.

The merchandise consists of grain screening pellets used as animal feed. It was classified as animal feeds, and ingredients therefor, not specially provided for, other, under item 184.75 of the Tariff Schedules of the United States, [TSUS], as modified by T.D. 68-9. Consequently, it was assessed with duty at the rate of 8 per centum ad valorem.

Plaintiff contests that classification, and claims that it should have been classified as animal feeds, and ingredients therefor, not specially provided for: byproducts obtained from the milling of grains, mixed feeds, and mixed-feed ingredients, under item 184.70, TSUS, as

modified by T.D. 68–9. Hence, plaintiff maintains that the merchandise should have been admitted duty free.

The following are the pertinent provisions of the tariff schedules as modified by T.D. 68–9:

Classified under:

Schedule 1, Part 15, Subpart C:

"Animal feeds, and ingredients therefor, not specially provided for:

* * * * * * *

184.75 Other ..... 8% ad val."

Claimed under:

Schedule 1, Part 15, Subpart C, Headnote 1:

"For the purposes of this subpart—

(a) the term 'animal feeds, and ingredients therefor' embraces products chiefly used as food for animals, or chiefly used as ingredients in such food, respectively, * * *

(b) the terms 'mixed feeds' and 'mixed-feed ingredients' in item 184.70 embrace products which are admixtures of grains (or products, including byproducts, obtained in milling grains) with molasses, oil cake, oil-cake meal, or other feedstuffs, and which consist of not less than 6 percent by weight of the said grains or grain products."

Schedule 1, Part 15, Subpart C:

"Animal feeds, and ingredients therefor, not specially provided for:

* * * * * * *

184.70 Byproducts obtained from the milling of grains, mixed feeds, and mixed feed ingredients ..... Free"

Also pertinent is General Interpretative Rule 10(e) which provides:

"(e) in the absence of special language or context which otherwise requires—

(i) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;"

The record reveals that the grain screening pellets at bar are made from the byproducts of the cleaning of various types of grain. The byproducts are the screenings and dust taken from the pollution filters, and include small particles of grain, broken pieces of grain, and chaff. These grain screenings, as they are called, are pulverized, compressed, and mixed with steam and a binder or binding agent, to form the pellets. The mixing and binding process is accomplished in a pelletizing machine.

The binder or binding agent used in the making of the pellets is called "Lignosite," a trademark owned by the Georgia-Pacific Corporation. It is prepared in different forms for various commercial markets, and can be either liquid or a dry powder. The liquid form, liquid calcium lignosulfonate, is known commercially as "LLS."

A summary of the components and uses of the "LLS Pellet Binder" are found in a technical bulletin published by Georgia-Pacific. It is a liquid byproduct of the production of paper from wood cellulose, and is advertised as a feed pellet binder derived or extracted from "spent sulfite liquor." It comprises about one half of one percent of the weight of the pellets at bar which are produced by the firm, Pacific Elevators.

The claimed duty free category, within item 184.70, applies to "[b]yproducts obtained from the milling of grains, mixed feeds, and mixed-feed ingredients." By virtue of headnote 1(b), *mixed feeds* must consist of an admixture, not less than 6% by weight, of grains, or byproducts obtained from the milling of grains with "molasses, oil cake, oil-cake meal, or other feedstuffs."

Plaintiff summarizes its position by stating that the "product at bar includes grains and grain products in which the grain content is over 6% by weight, and the modified calcium lignosulfonate preparation known as 'LLS'." Asserting that "LLS" is "other feedstuffs" within the meaning of the headnote, it concludes that the imported merchandise meets the prescribed requirements, and should therefore be classified under item 184.70, and admitted duty free.

The defendant agrees that a product to be classified as "mixed feed" under item 184.70 must consist of not less than 6% by weight of grains, but contends that there is "no evidence that the subject merchandise fulfills this requirement." The defendant also agrees that in addition to the grain ingredients, a "mixed feed" under item 184.70 must contain "molasses, oil cake, oil-cake meal, or other feedstuffs." It is its position, however, that the "LLS," admittedly the binder or pellet binding agent used in the subject merchandise, is not "other feedstuff." Consequently, the defendant maintains that the imported

merchandise "cannot properly be classified under item 184.70 *supra*, and was correctly classified under item 184.75."

Several cases decided under the predecessor provision found in the Tariff Act of 1930 shed some light upon the legal issue presented. Paragraph 730 of the Tariff Act of 1930 provided for "by-product feeds obtained in milling wheat or other cereals," and for "mixed feeds, consisting of an admixture of grains or grain products with oil cake, oil-cake meal, molasses, or other feedstuffs."

In *Cía. Mexicana de Malta, S.A.* v. *United States*, 69 Treas. Dec. 729, T.D. 48273 (1936), this court, based upon the language of the 1930 tariff provision, held that a mixture of only one grain did not qualify for classification as "mixed feeds." Even though the merchandise consisted of ground small grains and cracked grains of barley, the court stated that "[i]t is clear that the only grain involved in the product before us is barley." 69 Treas. Dec. at 731. Additionally, the court indicated that the product could not have been classified as "mixed feeds" because: "There is not, however, any oil cake, oil-cake meal, molasses, or other feedstuffs in the mixture." *Ibid.*

In *United States* v. *F. W. Myers & Co., Inc.*, 29 CCPA 34, C.A.D. 168 (1941), also decided under paragraph 730, the appellate court held that a mixture of several products consisting of grain or grain products, but without any "oil cake, oil-cake meal, molasses or other feedstuffs," did not qualify as "mixed feeds." The court indicated clearly that:

> "the statute does not provide for 'mixed feeds' consisting of an *admixture of grains or grain products*, but, on the contrary, provides for 'mixed feeds, consisting of an admixture of grains or grain products *with* * * * *other feedstuffs*,' that is, feedstuffs other than grains or grain products, including 'oil cake, oil-cake meal' and 'molasses.'" (Emphasis in original.) 29 CCPA at 38.

The appellate court consequently reversed the determination of this court that had held the mixture of grain products, without "other feedstuffs," dutiable as "mixed feeds."

Other cases show that the imported "mixed feed," in its imported condition, must be fit for use as an animal feed, although it need not necessarily be a complete or balanced ration. *Walter Johnson* v. *United States*, 21 CCPA 129, T.D. 46464 (1933); *Southwestern Sugar & Molasses Co.* v. *United States*, 18 Cust. Ct. 128, C.D. 1056 (1947). As stated in the *Southwestern Sugar & Molasses* case, "Congress must have intended that the term 'mixed feed' include concentrated mixtures containing grain and other feedstuffs which form a necessary

part of an animal's diet, and not only feeds which contain a complete ration for an animal." 18 Cust. Ct. at 134.

Paragraph 730 of the Tariff Act of 1930 did not contain a provision which required any particular percentage of grain or grain products. As a result of the case of *Corporacion Argentina de Productores de Carnes* v. *United States*, 32 CCPA 175, C.A.D. 304 (1945), which required merely that the percentage be "substantial," Congress added the "not less than 6 percent by weight" requirement in headnote 1(b).

In the case at bar the parties are in agreement that item 184.70 of the tariff schedules requires an admixture of both grains and other feedstuffs. See *Mary G. Ricks* v. *United States*, 11 Cust. Ct. 128, C.D. 809 (1943), *aff'd*, 33 CCPA 1, C.A.D. 308 (1945); *Mary G. Ricks* v. *United States*, 7 Cust. Ct. 63, C.D. 535 (1941).

Plaintiff asserts that the imported merchandise "meets all of the grain requirements" for classification as "mixed feeds." It urges that the "other aspect of the requirements for classification as a mixed feed is the inclusion of 'molasses, oil cake, oil-cake meal, or other feedstuffs'," and that "LLS" is an "other feedstuff."

Defendant denies that "LLS" is an "other feedstuff," and contends that plaintiff "has failed to carry its burden of proving chief use of LLS as a feedstuff." See General Interpretative Rule 10(e)(i); see also schedule 1, part 15, subpart C, headnote 1(b) (*supra*).

The plaintiff states the question presented as follows:

> "Is the binding agent liquid lignosulfonate, commercially known as 'LLS', used in the production of the imported pellets, included within the meaning of the term 'other feedstuffs' in Headnote 1(b) of Schedule 1, Part 15, Subpart C, TSUS?"

In its reply brief plaintiff states that "the merchandise has already been classified as animal feed and ingredients therefor under item 184.75 and thus is presumed to fall within the definition of these terms in headnote 1(a), Subpart C, Part 15, of Schedule 1, TSUS as being chiefly used as food for animals or chiefly used as ingredients in such foods." It is to be noted, however, that the product classified by the customs officials is the *grain screening pellet* which was found to be an animal feed. All that may be presumed from that classification is that the entire pellet, made up of byproducts from the cleaning of various types of grain, is chiefly used as a "food for animals." Plaintiff cannot rely on the customs classification as a determination that each of the ingredients of the grain screening pellet, including the binding agent, "LLS," is in itself a product "chiefly used as food for animals."

For plaintiff to prevail under the claimed classification, it must prove that the pellet consists of an admixture of grains, or products, including byproducts, obtained in the milling of grains, "with molasses, oil cake, oil-cake meal, or other feedstuffs." Admittedly, molasses, oil cake and oil-cake meal are feedstuffs, but the pellet does not contain any of them. The question, therefore, is whether "LLS" is an "other feedstuff," and, if it is, whether the pellet consists of not less than 6% by weight of grains or grain products.

On this record the court finds that plaintiff has not succeeded in bearing its burden of proof that the pellet binder, or binding agent "LLS" is included in "other feedstuffs" for classification under item 184.70. A contrary finding would do violence to the presumption of correctness that attaches to official administrative action, which, in customs classification cases, has been codified by the Customs Courts Act of 1970. 28 U.S.C. § 2635(a). At this late date, no citation is required for the principle that the classification of the customs officials is presumed to be correct, and that, in order to prevail, plaintiff must bear a dual burden, viz., it must establish that the customs classification is incorrect, and that the claimed classification is correct. Plaintiff has failed to meet this burden.

To qualify as "mixed feeds" the admixture of grains or byproducts must be "with molasses, oil cake, oil-cake meal, or *other feedstuffs* * * *." (Emphasis added.) The doctrine of *ejusdem generis* is usually helpful to determine the meaning of general words which follow a specific enumeration. In this case the general words, "other feedstuffs," follow the specific enumeration of "molasses," "oil cake," and "oil-cake meal." The only case where reference was made to the application of this doctrine of statutory construction to the words "other feedstuffs" is *Corporacion Argentina de Productores de Carnes* v. *United States*, 32 CCPA 175, C.A.D. 304 (1945). The court, in that case, uttered the following dicta:

> "The rule which requires that, in determining the classification of an imported article under a general clause which follows specifically enumerated articles, they all should be regarded as of the same class, we think, cannot be urged as a controlling consideration here. The specific enumerations preceding the general clause 'or other feedstuffs' are oil cake, oil-cake meal, and molasses. It would seem there is about as much difference between molasses and oil cake or oil-cake meal as there is between a mixed meat, cereal, and vegetable product and molasses. In other words, the enumerated articles belong to no single general class, except insofar as they are feedstuffs." 32 CCPA at 184–85.

Even assuming the correctness of the statement that the "enumerated articles belong to no single general class," the determination must nevertheless be made whether "LLS" is included in "other feedstuffs."

Webster's Third New International Dictionary of the English Language defines "feedstuff" as "a feed for domestic anim als; *usu:* any of the constituent nutrients of an animal ration."

In the *Corporacion Argentina* case, which was decided by the Court of Customs and Patent Appeals in 1945, the court concluded that the term "feedstuffs," under the Tariff Act of 1930, included feeds for dogs. The court stated:

> "The best definitions of the terms 'mixed feeds' and 'feedstuffs' with which we have been made acquainted, are in War Food Order 99, 9 Fed. Reg. 5016, where these terms are defined as follows:
>
> 'Mixed feed' means any mixture or combination of two or more natural or artificial feedstuffs used or intended for use in feeding livestock, poultry, fur-bearing or other animals.
>
> 'Feedstuff' means any material or substance used or intended for use in the feeding of livestock, poultry, fur-bearing animals or other animals for any purpose whatever." 32 CCPA at 183.

What may be gathered from these sources is that a "feedstuff" may be any product used or intended to be used to feed animals. Clearly, the product must itself be an animal feed.

The court finds that the previous definitions do not include a product used to form or bind a feed for animals. "LLS" is not used to feed animals, but is used to bind byproducts from the cleaning of various types of grain, and make pellets better suitable for their use as feed for animals. Plaintiff has not established that "LLS" is itself a feedstuff. Despite plaintiff's claim that "LLS" has some food value, it did not prove that "LLS" is used as "animal feed," as are molasses, oil cake, oil-cake meal or other feedstuffs.

Although the words "other feedstuffs" were in the Tariff Act of 1922, only meager guidance is offered by cases decided under that act. Additionally, no case has been found which has dealt with lignosulfonate or any of the other similar products referred to in the present case.

Since "LLS" is not one of the products enumerated in the pertinent headnote, plaintiff asserts that it serves to replace one of those named, viz., molasses. The evidence, however, does not permit such a finding. The reliable testimony reveals that molasses is not used as a binder and that "LLS" is not used for its food value. On the record, therefore, any claim that "LLS" is "other feedstuff" because of its alleged similarity to molasses, is untenable.

Plaintiff stresses that "LLS" has some food value, and that, however "small" or "low," it is "not of such negligible quantity that it can be ignored under the *de minimis* rule." It adds that "[l]ignin sulfonates are registered as food additives with the Food and Drug Administration * * *, and are provided for in 21 CFR 121, 234 (1971 edition) covering use as a pelleting aid, binding aid, surfactant, and as a *source of metabolizable energy*." (Emphasis in original.) Registry, or permission for their use as food additives, however, does not justify the conclusion that lignin sulfonates in general, or "LLS" in particular, are "other feedstuffs" within the meaning of the pertinent headnote. The evidence of record designed to show that "LLS" was also used as a "source of metabolizable energy" is wholly inadequate to support a finding that it is a "feedstuff" or "other feedstuff" under item 184.70 of the tariff schedules.

All of the witnesses indicated with crystal clarity that the purpose or reason for the use of the "LLS" was to form or bind the pellet. Indeed, both of plaintiff's witnesses dispelled all doubts on this crucial question. Their testimony, on the essential nature and purpose for the use of "LLS," is conclusive. "LLS" is "a feed binder" used to bind the pellet and make a "firmer" pellet. It is a product made "for binding purposes to make a better pellet." There is no evidence to permit a finding that it is "animal feed" or a "feedstuff."

In addition to the testimony of the witnesses, technical bulletins of Georgia-Pacific on "Lignosite" and lignin chemicals also describe the "LLS Pellet Binder," "Perma-Pel," and "Lignosite 50%, Neutralized." The bulletin on the "LLS Pellet Binder," in part, describes it as follows:

> "Georgia-Pacific LLS is a refined calcium lignosulfonate especially designed for use as an animal and poultry feed pellet binder. LLS is approved for use in feed preparations by the FDA up to 4% by weight on a solids basis. LLS has a metabolizable energy level comparable to many ingredients it would replace in the formula. Palatability and ingestion are not affected.
>
> Pellets containing LLS consistently achieve greater durability than untreated pellets or pellets using dry binders."

"Perma-Pel," a dry or solid form of lignosulfonate, is described as "a refined calcium lignosulfonate manufactured within close specification for use as an animal and poultry feed pellet binder. Use of Perma-Pel allows manufacture of more durable pellets * * *."

The record indicates that, notwithstanding the difference in names, and the addition of a "small amount of surface active [surfactant] agent," LLS is "identical" to "Lignosite 50%, Neutralized." Mr. Watson, a witness for the plaintiff and a manager of market develop-

ment for the Georgia-Pacific Corporation, testified that the two products are the same, and "would differ only in the addition of the surfactant."

Mr. Baum, a witness for the defendant, and an expert "in the field of lignosulfonate chemistry," agreed that LLS and Lignosite 50%, Neturalized were "basically * * * the same product with a different label." When asked if he knew of "any other uses aside from use as a pellet binder during 1971 to which liquid lignosulfonate was put," Mr. Baum replied: "Linoleum mastic adhesive and in the concrete industry."

The technical bulletin on "Lignosite 50%, Neutralized," under the heading "Uses," states:

> "Lignosite 50%, Neutralized is an anionic material which lends itself to a variety of applications. Major applications include the following industries:
>
> | | |
> |---|---|
> | Cement | Ceramics |
> | Gypsum Board | Structural Clay |
> | Adhesive | Refractories" |

Upon the record presented the court can only conclude that "LLS" is precisely what it is advertised to be in the Georgia-Pacific technical bulletin, viz., a "pellet binder." As stated in the technical bulletin it is "specially designed for use as an animal and poultry feed pellet binder." It is not "an animal and poultry feed." It is "an animal and poultry feed *pellet binder*." (Emphasis added.)

All of the evidence, exhibits and testimony show clearly that "LLS" is a pellet binder or binding agent. Apart from unsubstantiated factual assertions, there is nothing in this record that would justify a finding that "LLS" is "other feedstuffs," within the meaning of the pertinent headnote, as claimed by the plaintiff. Plaintiff has not succeed in proving that "LLS" is "other feedstuffs," as required by the headnote, and its claim for classification of the imported merchandise under item 184.70 of the tariff schedules must fail.

In view of this court's finding that plaintiff has not proven that "LLS" is an "other feedstuff" within the pertinent headnote, it is not necessary to pass upon defendant's assertion that "plaintiff has not carried its burden of proof with respect to the 6% requirement of item 184.70, TSUS."

Since plaintiff has failed to meet its burden of proof in establishing that the imported merchandise satisfies a statutory requirement for classification under item 184.70 of the tariff schedules, the claim is overruled, and the customs classification under item 184.75 is sustained.

Judgment will issue accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *May 3, 1976.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/117	Watson, J. April 27, 1976	James A. Cole, Inc.	73-11-03248	Item 748.20 21%	Item 774.60 8.5%	Judgment on the pleadings	Los Angeles Plastic flowers, etc.
P76/118	Watson, J. April 27, 1976	Reliance Trading Corp.	71-9-01064	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago; Los Angeles Artificial flowers, etc., in c.v. of plastic

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/62	Landis, J. April 27, 1976	A & A Trading Corp.	73-3-00788-S1	Export value	Appraised values less amounts described as commission, purchasing agent's commission or buying commission which were included in appraised values by customs	Judgment on the pleadings	Seattle Merchandise covered by invoices which specify A&A Japan, Ltd.; and A&A Japan, Ltd. or Allied Sales Corp. as having been involved in transaction

R76/63	Landis, J. April 27, 1976	A & A Trading Corp.	74-1-00156	Export value (Merchandise covered by invoices which specify A&A Japan, Ltd.; and A&A Japan, Ltd. or Allied Sales Corp. as having been involved in transation) Constructed value (Radios, some imported with earphones and batteries (entries 140-137, 134660, 142958, 144887, 144889)	Appraised values less amounts described as commission, purchasing agent's commission or buying commission which were included in appraised values (merchandise specified under export value) Various invoice prices, which prices do not include amounts described as commissions, purchasing agent's commissions, or buying commission and do not include 20.1% additions for the 8, 9, 10, 13 and 15 transistor radios or 9.16% additions for 8 transistor radios (merchandise specified under constructed value)	Judgment on the pleadings	Philadelphia See "Basis of Valuation" column for merchandise

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